

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2007-022770

10/13/2010

HONORABLE EMMET RONAN

CLERK OF THE COURT  
M. Postert  
Deputy

ARACAJU INC, et al.

ROGER C DECKER

v.

TRUE NORTH INC, et al.

BRADLEY D WEECH

RYAN W ANDERSON

MINUTE ENTRY

The Court has considered the parties' pleadings and the arguments of counsel on two pending Motions for Summary Judgment and on the Receiver's Motion for Order Directing the Receiver to Modify Membership Requirements for Parent Profiles. The Court makes the following findings:

- 1) There is no genuine issue as to the existence of two separate Operating Agreements, one of which applies to Adoption Media, LLC and the other to Adoption Profiles, LLC.
- 2) There is no genuine issue that Nathan Gwilliam has agreed to the validity and enforceability of the Operating Agreements by his words and conduct both prior to, and since, the commencement of this litigation. The Court's finding in this regard is based on the facts set forth at paragraphs 48-128 of the Statement of Facts submitted in support of Dale Gwilliam's Motion for Summary Judgment filed 11/06/2009.

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- 3) The terms “members interests” and “terms and conditions”, as used in Section 7.7 of the Operating Agreements are vague and do not clearly set forth how the parties are to implement the “Buy/Sell” provisions of the Operating Agreements.
- 4) The parties have agreed that the “Buy/Sell” provisions in the two operating agreements also apply to the remaining six companies that don’t have Operating Agreements (Transcript 5-19-08, pg 8, line 3-10; Transcript 3-17-09, pg 5, line 15025).
- 5) The process by which the “Buy/Sell” provisions would be implemented is unresolved as to all 8 companies owned by the parties.

The Court makes the following rulings on the pending motions:

**1) Nathan Gwilliam’s Motion for Summary Judgment**

IT IS ORDERED granting the Motion without prejudice as it relates to claims made by Dale Gwilliam on behalf on the “Companies” because he hadn’t complied with Rule 23.1 Arizona Rules of Civil Procedure and A.R.S. 29-831 at the time the Amended Answer and Counterclaim were filed. The Motion is denied as to claims made by Dale Gwilliam on his own behalf.

IT IS ORDERED granting the Motion as to Count 5.

IT IS FURTHER ORDERED granting the Motion as to Count 7 because the terms had not been agreed upon. (See transcript of 5-19-08 hearing).

**2) Dale Gwilliam’s Motion for Summary Judgment**

IT IS ORDERED granting the Motion to the extent that the Court finds there is no genuine issue of material fact that the two Operating Agreements are valid and enforceable against the parties. The Court declines to enter any other findings because there are numerous genuine issues as to how the “Buy/Sell” provisions should be implemented.

IT IS ORDERED denying the Motion in all other respects as the Court finds the Amended Complaint states claims upon which relief can be granted.

**3) Receiver’s Motion**

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IT IS ORDERED denying Dale Gwilliam's Request for an Evidentiary Hearing at this time.

IT IS FURTHER ORDERED that the Receiver shall take the action set forth at paragraphs 3, 4 and 5 of the Response filed by Dale Gwilliam.

IT IS FURTHER ORDERED deferring any additional orders pending the expedited process the Court will be implementing regarding the "Buy/Sell" provisions of the Operating Agreements.

IT IS FURTHER ORDERED setting a Status Conference on **November 1, 2010 at 10:30 a.m. (Time allotted: 30 minutes)** before:

**HONORABLE EMMET J. RONAN  
SOUTHEAST ADULT FACILITY  
222 EAST JAVELINA - COURTROOM 205  
MESA, AZ 85210**

**NOTE: ALL COURT PROCEEDINGS ARE RECORDED BY AUDIO METHOD AND NOT BY A COURT REPORTER. ANY PARTY MAY REQUEST THE PRESENCE OF A COURT REPORTER BY CONTACTING THIS DIVISION THREE (3) COURT BUSINESS DAYS BEFORE THE SCHEDULED HEARING.**

Counsel and the parties shall meet and confer prior to the status conference and are to appear personally at the conference and be prepared to discuss the following:

- 1) Bifurcating the parties various claims for damages from the issue of how to implement the Buy/Sell provisions of the Operating Agreements as to all 8 companies.
- 2) A very expedited schedule to,
  - a. determine the "Buy/Sell" process for the companies, i.e. whether there will be one overall offer for all 8 companies or multiple offers, and,
  - b. setting up the protocol for how the parties will determine the "members interests" and "terms and conditions" as those terms are used in Section 7.7 of the two Operating Agreements.

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